

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
825 North Capitol Street, NE, Suite 4150
Washington, DC 20002-4210

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner

v.

KAREN JONES
Respondent

Case No.: DH-I-07-F100122

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985, as amended (D.C. Official Code §§ 2-1801.01, *et seq.*) and the District of Columbia Health Occupations Revision Act of 1985 (the “Act”), as amended. (D.C. Official Code §§ 3-1201.01, *et seq.*) By Notice of Infraction (the “NOI”) served on December 14, 2007, the Government charged Respondent, Karen Jones, with violating D.C. Official Code § 3-1210.01 (the “Statute”) for allegedly practicing a health occupation without a license.¹ The Notice of Infraction alleged that the violation occurred on December 14, 2007, at 2141 K Street, N.W. (the “Property”), and sought a \$2,000 fine.

On January 3, 2008, Respondent answered the NOI with a plea of Admit with Explanation and submitted a letter of explanation requesting a reduction of the fine. In her letter

¹ D.C. Official Code: § 3-1210.01 provides:

No person shall practice, attempt to practice, or offer to practice a health occupation licensed or regulated under this chapter in the District unless currently licensed, or exempted from licensing, under this chapter.

Respondent stated that she provided consultation on laser hair removal but did not perform this procedure. As a result, she did not believe that she was practicing medicine without a license.

On January 24, 2008, this administrative court issued an order permitting the Government to reply within 14 days to Respondent's Admit with Explanation. The Government did not file a response.

Based upon the entire record in this case, I make the following findings of fact and conclusions of law.

II. Findings of Fact

At the Property on December 14, 2007, the Respondent engaged in the practice of medicine without a license. Because she provided only consultation on laser hair removal and did not perform this procedure, Respondent did not believe that she was practicing medicine without a license.

The Respondent has accepted responsibility for her violation of the Regulation and has no record of prior, similar violations.

III. Conclusions of Law

Respondent's plea of Admit with Explanation establishes that on December 14, 2007, she violated the Statute at the Property as charged in the NOI. Although the Government seeks a \$2,000 fine, 16 DCMR 3601.2(a) provides that the violation of D.C. Official Code § 3-1210.01 is a class two infraction punishable by a fine of \$1,000. *See* 16 DCMR 3201.1(b)(1). Parenthetically, this provision also describes the violation as, "practicing a health occupation,

other than one enumerated in D.C. Official Code § 3-1205.01, without a license” (emphasis supplied). Since the practice of medicine is listed in § 3-1205.01, this statement appears to eliminate the imposition of the fine in this case.²

Yet, 16 DCMR 3201.6 provides:

The parenthetical language which follows the laws or regulations listed in this Title is only descriptive and the provisions of the cited law or regulation are controlling if there is any conflict between the cited law or regulation and the descriptive parenthetical language.

§ 3-1210.01 prohibits offering to practicing *any* health occupation licensed or regulated under the Act without a current license. It conflicts with the description of the offense set forth in the classification provision’s parenthetical; however, 16 DCMR 3201.6 provides that the cited law controls. Thus, a maximum fine of a \$1,000 may be imposed for a first offense of the Statute. 16 DCMR 3601.2(a) and 3201.1(b)(1).

It is clear that the Respondent’s failure to comply with the Regulation was unintentional; however, it is ultimately Respondent’s responsibility to comply with the licensing requirements. Respondent has accepted responsibility for her conduct and there is no evidence in the record that the Respondent has a history of previous, similar violations. These are mitigating factors that I have considered.

² The Government did not charge Respondent with a violation of D.C. Official Code § 3-1205.01 which specifically requires a license to practice medicine and other listed health occupations. 16 DCMR 3601.1 provides a classification for a violation of this statute and states in part:

Violation of the following provision shall be a Class 1 infraction:

Section 501 of the District of Columbia Health Occupations Revision Act of 1985, effective Mar. 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.01) (practicing medicine, acupuncture, chiropractic, registered nursing, practical nursing, dentistry, dental hygiene, ... without a license).

Accordingly, I will reduce the maximum fine for Respondent's violation of the Statute by \$300 and impose a \$700 fine for this violation.

IV. ORDER

Based upon the above findings of fact and conclusions of law, and the entire record in this matter, it is this _____ day of _____ 2008:

ORDERED, that Respondent is **LIABLE** for violating of D.C. Official Code § 3-1210.01 as alleged in the NOI and shall pay the sum of **SEVEN HUNDRED DOLLARS (\$700)** in accordance with the attached instructions within 20 calendar days of the date of mailing of this Order (15 calendar days plus 5 days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7); and it is further

ORDERED, that the appeal rights of any person aggrieved by this Order are stated below.

Date: March 18, 2008

/s/

Louis J. Burnett
Administrative Law Judge